



Filed Via ECFS

October 25, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *In the Matter of Connect America Fund and Lifeline and Link-Up Reform and Modernization*, WC Docket Nos. 10-90 and 11-42; **National Tribal Telecommunications Association's Tribal Area Solution for Universal Service Reform**

Dear Ms. Dortch:

On behalf of the National Tribal Telecommunications Association (NTTA), attached please find NTTA's Tribal Area Solution proposal for addressing the digital divide that currently exists between rural Tribal areas and the rest of the United States. This proposal recommends revisions to existing federal support mechanisms for carriers serving predominantly rural Tribal areas and urges the Commission and other stakeholders to comprehensively address the associated issues surrounding broadband affordability and adoption.

Please contact the undersigned if you have any questions.

Sincerely,

Douglas K. Kitch, CPA
Principal
Alexicon Telecommunications Consulting
On Behalf of The National Tribal Telecommunications Association

cc: Matthew Duchesne, ONAP

Attachment



National Tribal Telecommunications Association

Tribal Area Solution For Federal Universal Service Support

October 2018

**75 Carrizo Canyon Road
PO Box 229
Mescalero, NM 88340**

Executive Summary

The National Tribal Telecommunications Association (NTTA) consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom, as well as associate members Nez Perce Tribe and Sacred Wind Communications. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

The digital divide in rural Tribal areas – the difference in broadband service availability and affordability as compared to other and more urban areas of the United States – is a reality for many Native Americans. Even with the substantial efforts undertaken at the federal, state, and in some instances, the local, levels, Tribal areas are consistently on the wrong side of this divide. There are many causes of this persistent divide, including the rural and high cost nature of many Tribal areas, the chronic economic problems in Tribal areas, and the generally lower-income nature of Tribal residents. While solving these problems will take efforts from many disciplines, NTTA offers herein a proposal to address the insufficient and unpredictable support available to rate-of-return carriers serving Tribal areas, and urges the FCC, Congress and other stakeholders to tackle adoption/affordability, and broadband mapping issues in an expedited manner.

NTTA, consistent with past advocacy, proposes a Tribal Area Solution to revise current federal universal service programs for RoR carriers. These revisions, proposed for the High Cost Loop Support, Connect America Fund Broadband Loop Support, and Alternative Connect America Cost Model support programs, recognize the unique challenges faced by carriers serving rural Tribal areas of the lower 48 states in the country. The additional support generated by NTTA’s proposals would be accompanied by additional public interest obligations placed on support recipients, and would be subject to an inflation-adjusted cap on the total support generated.

I. Introduction and Summary

NTTA has worked on the problem of access to and affordability of broadband internet access services in Tribal areas of the United States continuously since the Federal Communications Commission (FCC) declared broadband internet access service (BIAS) to be part of the definition of universal service in 2011. Since then, as shown below in Table 1, federal universal service support for NTTA members in total has remained basically constant – while at the same time, NTTA members are expected to do more, such as provide universal BIAS at affordable rates. While broadband availability, depending on the fluid definition adopted by the FCC in its annual deployment report, has slightly improved in Tribal areas, there still exists a digital divide between these areas and the rest of the country.

In this Tribal Area Solution, NTTA takes another step to address the digital divide that exists between rural Tribal and other areas of the country. The data is incontrovertible that the divide is there, but action at the federal level continues to lag. Two years ago NTTA presented a solution for additional funding in Tribal areas served by rate-of-return (RoR) regulated carriers, upon which the FCC has yet to act. Since then, the FCC has made several changes to the federal programs, has several proposals pending, and has addressed one major problem experienced by carriers serving Tribal areas. And yet, no comprehensive solution has been adopted.

In order to move this important process forward, NTTA presents a package of revisions to the current federal universal service fund programs to better calibrate support for deployment, operations, maintenance, and affordability in Tribal areas. These revisions will address high cost programs as well as the low-income consumer Lifeline program under the theory that deploying a network does no good unless the network can be operated and maintained, services can continue to be provided on a cost-efficient basis, and customers can afford to subscribe to the services offered.

II. Background

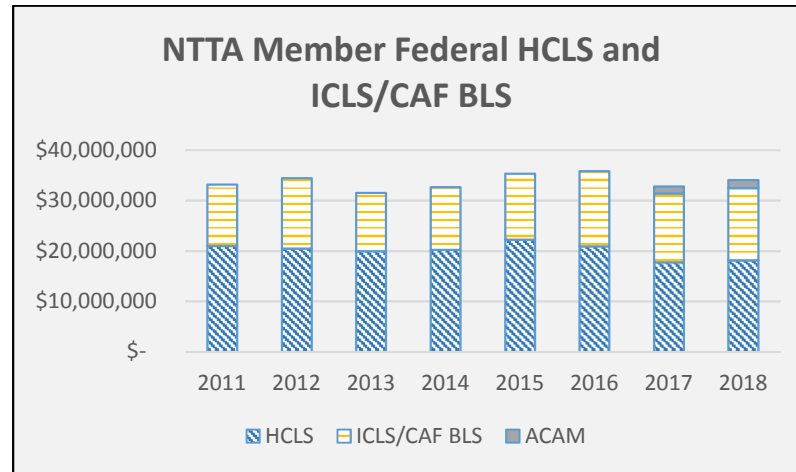
NTTA's position on support for broadband, and voice, services in Tribal areas has consistently called for additional attention, policies, and support for Tribal areas where the digital divide is the greatest. NTTA has presented unrefuted evidence on the record that Tribal areas of the United States are continually on the wrong side of the digital divide, are more difficult and costly to serve, and carriers serving these areas incur unique and higher levels of costs. NTTA has also demonstrated that Americans living on Tribal lands require more support in order to make even subsidized voice and broadband services affordable.

NTTA's Tribal Broadband Factor (TBF), not to be confused with the FCC's recent proposal of the same name, consisted of a simple method to increase support to Tribal areas served by RoR carriers while at the same time ensuring support was used effectively and efficiently.¹ The TBF called for a 25 percent increase in support to RoR carriers serving locations in census blocks located on Tribal lands. In return, TBF recipients would be obligated to meet certain build out obligations commensurate with the amount of additional support received. In addition, NTTA made clear that TBF support would also help with

¹ See e.g., *In the Matter of Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking (FCC 16-33, rel. March 30, 2016) at 368-382; *Also see* Letter from Godfrey Enjady, NTTA President, to Marlene H. Dortch, filed in WC Docket No. 10-90 on June 19, 2015.

continuing operations and maintenance of voice and broadband networks. Table 1 shows the level of support for all NTTA members since 2011²:

Table 1



In continuance of and consistent with NTTA’s goal of ensuring all Native Americans have access to quality, affordable services, NTTA advocated for relief from the FCC’s operating expense limitation.³ In order to recognize the unique level and types of expenses related to serving Tribal areas, NTTA requested the FCC increase the allowance for carriers serving these areas, which the FCC partially granted.⁴ Unfortunately, one of the conditions placed on receiving this relief caused some carriers to be improperly excluded, as evidenced by petitions filed by two carriers.⁵

To address affordability and adoption of broadband services, NTTA advocated for an increase in the enhanced Tribal Lifeline credit, originally adopted by the FCC in 2000.⁶ Due to the addition of broadband to the list of services to be supported by the federal Lifeline program, NTTA recommended the FCC further consider an increase to the current enhanced Tribal credit of \$25 to recognize these facts. The FCC thus far has declined to adopt NTTA’s proposal.

The FCC, Congress, and other stakeholders have recognized the necessity to focus resources on Tribal areas to address the twin challenges of availability and affordability. This recognition includes the aforementioned enhanced Tribal Lifeline credit, the FCC’s commitment to working with Tribal governments on a peer-to-peer basis⁷, statements made in the National Broadband Plan that Tribal areas

² USAC High Cost Program Disbursements tool, includes NTTA members Cheyenne River Sioux, Fort Mojave, Gila River, Hopi, Mescalero Apache, Sacred Wind, Saddleback, San Carlos Apache, and Tohono O’odham

³ See e.g., NTTA Comments, filed May 12, 2016 in WC Docket No. 10-90 and NTTA September 16, 2016 Ex Parte communication filed in WC Docket No. 10-90

⁴ *In the Matter of Connect America Fund*, WC Docket No. 10-90 (FCC 18-37, rel. April 5, 2018)

⁵ Petitions for Reconsideration Filed by Mescalero Apache Telecom, Inc. on May 30, 2018 and Sacred Wind Communications, Inc. on May 31, 2018

⁶ *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45 (FCC 00-208, rel. June 30, 2000)

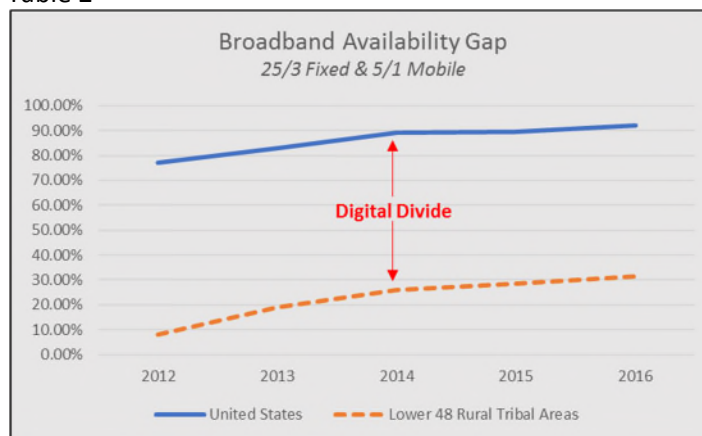
⁷ *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement (FCC 00-207, rel. June 23, 2000)

require more support in order to meet national broadband goals⁸, and statements made in the 2011 USF/ICC Transformation Order regarding the challenges faced in Tribal areas.⁹ The FCC also adopted Tribal-specific Connect America Fund (CAF) programs to address at least part of the problem, and recognized the need for Tribal governments to have a substantive say in how services are deployed and provided in their areas.¹⁰

Recent activities have continued this trend – the FCC recently proposed to adopt local priority filing windows for rural Tribal nations in relation to transforming the 2.5 Ghz spectrum band¹¹, proposed a revision to the RoR carrier ACAM support calculation to include more locations located in Tribal areas in the model¹², and provided operating expense limitation relief to a limited set of RoR carriers as mentioned above. Further, the so-called Ray Baum’s Act was included in the 2018 Consolidated Appropriations Bill that, among other things, requires the FCC to issue a report by 2020 to address the lack of broadband availability in Tribal areas. Finally, the United States Government Accountability Office (GAO) recently released a report on broadband data in Tribal areas and concluded that the FCC’s information overstates availability.¹³

When considered in totality, the efforts to bring universal broadband availability to Tribal areas has, at least on paper, been fairly substantial. However, the facts are clear – Tribal areas, especially rural Tribal areas in the lower 48 states, lag significantly behind the rest of the country in regards to broadband availability. According to the FCC’s latest broadband availability report (which, according to the GAO, overstates access in Tribal areas)¹⁴, 64.6 percent of Americans living on Tribal lands have access to fixed broadband with speeds of at least 25/3 Mbps, compared 92.2 percent of the country in total. Over time, the digital divide, measured here as the difference in availability, has barely narrowed:

Table 2



⁸ *Connecting America: The National Broadband Plan*, rel. March 16, 2010, at p. 152, Box 8-4

⁹ *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (FCC 11-161, rel. November 18, 2011) at 1059

¹⁰ *Id.*, Tribal Mobility Phase I and II funds; adoption of Tribal Engagement Rules

¹¹ *In the Matter of Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, WT Docket No. 18-120 (FCC 18-59, rel. May 10, 2018)

¹² *In the Matter of Connect America Fund*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, WC Docket No. 10-90 (FCC 18-29, rel. March 23, 2018) at 120 (*RoR USF Budget Order/NPRM*)

¹³ GAO Report: Broadband Report, *FCC’s Data Overstate Access on Tribal Lands*, GAO-18-630, September 2018

¹⁴ *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Services to All Americans in a Reasonable and Timely Fashion*, GN Docket No 17-199, 2018 Broadband Deployment Report (FCC 18-10, rel. February 2, 2018)

In 2018, Congress passed, and the President signed the Consolidated Appropriations Act.¹⁵ Section 508 of this Act, a portion of what is commonly known as Ray Baum’s Act, addresses Tribal digital access. Pursuant to Section 508, the FCC is to submit a report to Congress evaluating broadband coverage in Indian country, and is to complete a proceeding to address the unserved areas identified in the report. This will clearly be a substantial effort, and must include an investigation into the topics raised in this paper, including but not limited to, sufficiency and predictability of broadband universal service support, affordability and adoption, broadband mapping, and Tribal sovereignty. NTTA looks forward to assisting the FCC with this report and subsequent proceeding, and requests the FCC take into consideration the proposals made below.

As a result of the above, NTTA once again implores the FCC, Congress, and other policy makers to address the serious digital divide that exists between rural Tribal areas and the rest of the country. To this end, NTTA offers several policy proposals in the remainder of this paper.

III. NTTA’s Tribal Area Solution

In order to address the clear digital divide that exists between rural Tribal areas and the rest of the United States, and to better recognize circumstances in existence in Tribal areas, including Tribal sovereignty, historically depressed economies, sparse populations, and high costs of service, NTTA offers Tribal Area Solution (TAS) that proposes simple revisions to the FCC’s current federal high cost support programs. As partial evidence that the areas served by NTTA members are substantially higher cost than the average across the United States, consider Table 3¹⁶:

Table 3

Company	2016 CPL
Cheyenne River Sioux Telephone Authority	\$ 2,364.69
Fort Mojave Telecommunications, Inc.	\$ 2,916.50
Saddleback Communications	\$ 1,940.07
Tohono O’Odham Utility Authority	\$ 1,498.09
Mescalero Apache Telecom, Inc.	\$ 1,668.55
Gila River Telecommunications, Inc.	\$ 2,657.28
San Carlos Apache Telecommunications Utility, Inc.	\$ 1,935.10
Sacred Wind Communications	\$ 3,141.98
NTTA Average	\$ 2,265.28
<i>National Average</i>	<i>\$ 1,129.97</i>

A. Address the Overall Budget

The first action the FCC and other policymakers must take is to address the insufficiency of the current RoR high cost fund (HCF) budget. The FCC recognizes this problem in its latest rulemaking proceeding¹⁷, and received substantial comment on the need to increase the budget and fix the budget

¹⁵ Consolidated Appropriations Act of 2018 (HR 1625)

¹⁶ Source: National Exchange Carrier Association total HCLS cost per loop data (excludes Hopi Telecommunications, Inc. due to ACAM election)

¹⁷ RoR USF Budget NPRM at 107

control mechanism.¹⁸ NTTA agrees with parties arguing for a rebasing of the RoR HCF and then applying an inflation factor on an ongoing basis. However, the budget should include a separate and specific amount allocated to cover the support increases for Tribal areas in the revisions offered by NTTA below.

B. Connect America Fund Broadband Loop Support (CAF BLS)

CAF BLS was adopted by the Commission to provide high cost support for broadband only lines that were previously excluded from High Cost Loop Support (HCLS) and Interstate Common Line Support (ICLS).¹⁹ CAF BLS provides support for data only broadband line (DOBB) costs, determined via FCC rules, above a per-line threshold, currently set at \$42 per month.²⁰ In essence, the \$42 per month threshold establishes the amount that DOBB customers should be expected to contribute toward their monthly broadband internet access service.

NTTA proposes to increase CAF BLS funding to Tribal areas served by RoR carriers by reducing the \$42 per month threshold by 25 percent to \$31.50. This will provide more support to the affected carriers, which can then reduce the pressure on customers to be able to pay for this vital service. The 25 percent reduction is consistent with (1) NTTA's original TBF, and (2) the FCC's proposal in the latest RoR USF NPRM.

C. High Cost Loop Support (HCLS)

HCLS is designed to support higher than average loop costs related to voice telecommunications services. The HCLS calculation, which has been in effect in one form or another since the 1990s, provides support for loops costs in excess of a national average, according to the algorithm contained in the FCC's rules.

NTTA proposes to revise the HCLS algorithm for carriers serving Tribal areas in the following manner:

- The current formula provides for study areas with 200,000 or fewer loops, and for study area costs per loop between 115% and 150% of the national average cost per loop, HCLS covers 65% of the study area loop costs. NTTA proposes to increase this amount to 81.25% (a 25% increase).
- For study areas with loop costs in excess of 150% of the national average, the HCLS covers 75% of the study area's costs. NTTA proposes to increase that to 93.75% (a 25% increase)

Again, the 25% adjustment is consistent with past proposals made by both the FCC and NTTA. Furthermore, this adjustment works within the FCC's current HCLS rules and thus does not constitute a new support mechanism.

D. Alternative Connect America Cost Model Support

¹⁸ See e.g., Letter to Marlene H. Dortch from ITTA, USTelecom, NTCA, and WTA, filed in WC Docket No. 10-90, *et al.*, on October 1, 2018

¹⁹ See *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order (FCC 16-33, rel. March 30, 2016)

²⁰ 47 C.F.R. §54.901

The FCC proposed a revision to the Alternative Connect America Cost Model (ACAM) that it termed a “Tribal Broadband Factor” (TBF).²¹ This revision, which was meant to draw more carriers serving Tribal areas into the ACAM support regime, would lower the funding threshold from \$52.50 by 25 percent to \$39.38. As shown in NTTA’s comments in response to the proposal, the ACAM revision would not result in sufficient support for most NTTA members.²² However, one NTTA member (Hopi Telecommunications) elected to receive ACAM support and would thus otherwise not be eligible for the TAS revisions outlined above. In addition, there may be other ACAM recipients that would otherwise be eligible for a support increase under the TAS proposal. In order to address these situations, NTTA recommends a solution similar to the Commission’s “TBF” where current recipients, if deemed eligible under the criteria discussed below, would receive revised offers of support at the reduced funding threshold for locations served on Tribal lands.

E. Other Issues

Eligible areas and carriers should be consistent with NTTA’s previous TBF proposal; namely eligible areas are those located in Tribal areas, served by RoR carriers. Any relief provided will be accepted by RoR carriers on a voluntary basis and will be provided for a specific term of years. The support increase caused by NTTA’s proposals will be limited to RoR carriers with service areas consisting of at least 50 percent Tribal areas.

In order to identify areas eligible for support via the TAS, NTTA proposes to begin with FCC Form 477 data, but that potentially affected carriers be able to provide supplemental information in order to prove additional eligible areas. This step is necessary due to the inherent inaccuracies of the Form 477 data in Tribal areas as documented in recent petitions for reconsideration filed before the FCC and in the September 2018 Government Accountability Office (GAO) report.

Carriers accepting the additional support offered via the revisions to HCLS and CAF BLS outlined above will incorporate additional buildout and reporting obligations. In addition to the baseline buildout obligations assigned to the receipt of HCLS and CAF BLS, NTTA proposes that a specific number of obligations in terms of locations lacking 10/1 Mbps or 25/3 Mbps service be attached to the increased support discussed herein. Specifically, and consistent with past NTTA proposals, a certain percentage of new support, equal to the percentage of CAF BLS and HCLS expended on capital expenditures and depreciation expense, be applied to a per-location allowance to arrive at the required new locations to be built out during the term of support. This method recognizes that the CAF BLS and HCLS programs help to support not only deployment but also ongoing operations and maintenance of broadband capable networks.

NTTA proposes to limit the total support offered and accepted by eligible carriers under the TAS to \$25 million per year. NTTA proposes that the total amount be funded from CAF reserves. As stated above, and consistent with advocacy by other industry groups for the overall RoR USF budget, NTTA proposes to adjust any cap on the support provided via the above-discussed USF program revisions to reflect inflation.

²¹ *RoR USF Budget NPRM* at 120

²² NTTA Comments, filed May 25, 2018 in WC Docket No. 10-90 at 4

IV. Affordability

Any attempt to address broadband availability in Tribal areas must also address affordability. The main methods the FCC and other policymakers use to address affordability and adoption issues are federal and state Lifeline programs. NTTA has advocated for an increase in the enhanced Tribal Lifeline discount, currently \$25 per month (\$34.25 in total), to recognize the addition of broadband service to the list of supported services, and in recognition of the cost of such service.²³

A recent study discussed the correlation, if any between the availability of high-speed broadband services in rural areas and economic benefits.²⁴ The study, unsurprisingly, concluded that affordability and adoption plays a significant role in if and how broadband services benefit rural economies.

CONCLUSION

It is imperative that the FCC, Congress, and other stakeholders address, in earnest, and take immediate action to remedy, the challenges in making universal broadband service in Tribal areas a reality. While many actions have been taken that attempt to address these challenges, the fact remains that the digital divide between Tribal areas and the rest of the United States stubbornly persists.

NTTA has constantly and consistently advocated for policies to help ensure universal voice and broadband access in Tribal areas. NTTA now offers the Tribal Area Solution that proposes revisions to current federal Universal Service programs designed to better allow RoR carriers serving Tribal areas to deploy, operate, and maintain broadband-capable networks. These proposals will help ensure support for carriers serving Tribal areas is sufficient, and perhaps more importantly, predictable. Currently, support for Tribal areas broadband service access is neither. NTTA also urges the FCC, Congress, and other stakeholders to seriously address adoption and affordability, as it does little good to deploy, operate, and maintain a broadband network if customers cannot afford the services offered.

NTTA Members

Cheyenne River Sioux Telephone Authority
Fort Mojave Telecommunications, Inc.
Gila River Telecommunications, Inc.
Hopi Telecommunications, Inc.
Mescalero Apache Telecom, Inc.
Saddleback Communications
San Carlos Apache Telecommunications Utility, Inc.
Tohono O'odham Utility Authority
Warm Springs Telecom

Associate Members

Nez Perce Tribe
Sacred Wind Communications

²³ NTTA Comments filed August 31, 2015 in WC Docket No. 11-42

²⁴ American Action Forum: A Look at Rural Broadband Economics, August 14, 2018